

In the Matter of Merchant Mariner's Document No. Z-814940-D2 and  
all other Seaman Documents

Issued to: JOSEPH SAN FELIPPO

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

993

JOSEPH SAN FELIPPO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 26 April 1957, an Examiner of the United States Coast Guard at Jacksonville, Florida, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as deck maintenanceman on board the American SS ROBIN GOODFELLOW under authority of the document above described, on or about 4 March 1957, Appellant assaulted and battered a member of the crew, ordinary seaman John O'Connor, by stabbing him with a dangerous weapon thereby inflicting grievous bodily harm.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of not guilty to the charge and specification.

The Investigating Officer made his opening statement and introduced in evidence the testimony of seaman O'Connor as well as that of two other witnesses. Two documentary exhibits were presented in evidence by the Investigating Officer before he rested his case. Counsel declined the opportunity to have Appellant testify in his behalf.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 29 April 1957. Appeal was timely filed on 21 May 1957 and a brief was submitted in August 1957.

### FINDINGS OF FACT

On 4 March 1957, Appellant was serving as deck maintenanceman on board the American SS ROBIN GOODFELLOW and acting under authority of his Merchant Mariner's Document No. Z-814940-D2 while the ship was in the port of Savannah, Georgia.

Early in the evening on this date, Appellant went ashore with several members of the crew including ordinary seaman John O'Connor. The seamen were drinking while ashore before they returned to the ship about 2100. O'Connor got an unopened bottle of whisky from his locker and took it to Appellant's room. Appellant, able seaman Kaufman and two other crew members were also in the room.

Upon entering through the door on the port side of the room, there was a double bunk approximately centered alongside the right-hand (aft) bulkhead. On the left-hand side, there was a desk in the far corner along the forward and starboard side bulkheads. Just aft of the desk, there was a small bench along the starboard bulkhead. The opposite ends of the bunks and desk almost overlapped so that there was a clearance of about 2 1/2 feet between the lower bunk and the desk at a point about 4 feet from the starboard bulkhead. The over-all dimensions of the room were about 14 feet from the starboard bulkhead. The over-all dimensions of the room were about 14 feet athwartships and 6 to 8 fore and aft.

Appellant opened the whisky bottle, which O'Connor had brought to the room, with his sheath knife and placed the 3 to 3 1/2-inch blade knife on the desk. About this time, Appellant asked O'Connor to leave and get some sleep because he had been drinking too much. An argument followed between the two seamen while they were still seated. O'Connor is over 6 feet tall and weighted about 210 pounds. Appellant is between 5 feet, 6 inches and 5 feet, 8 inches tall and weighted approximately 140 pounds.

As the argument continued, O'Connor stood up and advanced toward Appellant in the direction of the desk. Appellant got up from the bench and seaman Kaufman stepped in between the other two men in an attempt to prevent a fight. Kaufman was standing in the 2 1/2 foot space between the bunks and the desk facing toward O'Connor and the door. O'Connor was facing the starboard side. Appellant was on the opposite side of Kaufman from O'Connor. Appellant was standing near the desk and also facing toward the door when O'Connor swung with his fist at Appellant but missed. Appellant then reached around Kaufman with the sheath knife which Appellant had picked up from the desk and stabbed O'Connor in the left side of his back. The other two seamen had been standing in

back of O'Connor near the bunks or the door. O'Connor staggered to the door and fell in the passageway.

O'Connor was given first aid treatment for a deep, one-inch long cut and then taken to the U. S. Public Health Service Hospital in Savannah. Appellant was taken into custody by the local police authorities after having turned over to them the knife with which he had stabbed O'Connor.

O'Connor was operated on four times within the next three days as a result of this injury. There was profuse bleeding from the wound. He was hospitalized in Savannah for one month before being permitted to travel to his home in Brooklyn, New York, in order to convalesce there.

Appellant has no prior disciplinary record with the Coast Guard.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the evidence does not support the finding that he used the knife to inflict the wound on O'Connor. Appellant acted in justifiable self-defense since the use of a knife was not excessive force to repel the attack of the aggressor O'Connor who was 1 1/2 times Appellant's size. The law did not require Appellant to retreat as far as possible as in homicide cases. Appellant had no other means to defend himself and he was not required to depend on his shipmates to protect him. Even if Appellant used excessive force, there are mitigating circumstances, such as fear and lack of malice, which indicate that the order of revocation is too harsh.

APPEARANCE ON APPEAL: Messrs. Schulman and Goldberg of New York City.

#### OPINION

Appellant's contention that the evidence does not justify the finding that he was the person who injured O'Connor can be summarily disposed of on the basis of the circumstantial evidence despite the fact that both O'Connor and Kaufman testified that they did not know who did the stabbing. The other two seamen in the room did not testify. Among the numerous factors mentioned by the Examiners establishing the fact that Appellant committed the act are the following: the argument was solely between O'Connor and Appellant; Kaufman was trying to stop the anticipated fight; the other two seamen were farther away from O'Connor than was Appellant; O'Connor attempted to attack only Appellant; the latter

was standing next to the desk where he had placed the knife shortly before; Kaufman testified that Appellant left the room to report the stabbing to the Master; and the police officer who testified stated that Appellant produced a knife when he was questioned about the knife with which he did the stabbing. There was no attempt to refute the above matters since Appellant picked up the knife from the desk and stabbed O'Connor.

The more seriously disputed question is whether Appellant's conduct was justified on the ground of self-defense. The answer to this question depends upon whether it is considered that Appellant's method of defense constituted excessive force to repel the attack of O'Connor. 6 C.J.S. Assault and Batters, sec. 92b(2). I agree with Appellant that the Examiner erred in stating both that Appellant had no reasonable grounds to believe that he was in danger of great bodily injury and that a plea of self-defense cannot be sustained unless the person shows that he could not escape the danger by retreating. Appellant obviously had good cause to fear serious injury from the much larger seaman. The doctrine of "retreat to the wall" is applicable only in homicide cases. but I do not agree with Appellant's claim that his use of the knife was not excessive force under the circumstances prevailing at the time the stabbing occurred.

Admittedly, Appellant was in a position where he could not get past O'Connor to leave by the door. It is also true that a person need not wait until he is struck but may strike the first blow where the danger is imminent, and the use of deadly weapons may sometimes be justified to repel a simple assault where there is a great disparity in the physical strength of the parties 6 C.J.S. Assault and Battery, secs. 92(b) 1, 3. But Appellant was protected by Kaufman who was standing between the two men in the 2 1/2 foot space between the desk and the bunks. As long as Kaufman stayed there and blocked O'Connor's advance, he could not touch Appellant if he took advantage of the approximately 4 feet square space beyond Kaufman and the end of the bunks. Under these circumstances, it is my opinion that Appellant was not justified in taking the initiative to the extent that he reached around Kaufman and stabbed O'Connor in the left side of his back.

In view of the difference in size between the two seamen, the situation would have been different if Appellant had picked up the only available weapon to defend himself with and waited to see whether O'Connor would force his way past Kaufman to attack Appellant. This would have been somewhat similar to the case which was dismissed against a seaman who drew a knife and held it ready for use when another member of the crew who was a professional fighter raised his fist in a position to strike but no blows were then struck by either seaman. Commandant's Appeal No. 869.

A factor of secondary importance to consider is the presence of the other two seamen in the room. Appellant was not in such fear of O'Connor that he was afraid to get close enough to Kaufman to stab O'Connor. Hence, it seems reasonable to state that Appellant was not in such great fear but that he should have waited to see what these two men would do if O'Connor was able to pass, and insisted upon getting past Kaufman. To this extent, Appellant should have depended on his shipmates to protect him.

For these reasons, it is my opinion that the plea of self-defense should not prevail in this case because use of the knife, at the time it was used, was excessive force to repel the attack of O'Connor.

The order of revocation will be sustained in order to protect numerous other seamen against such conduct by Appellant. Seamen live in close quarters where arguments and disputes often arise. The result of this argument constituted a serious threat, to the life of O'Connor, which was not lessened due to fear or the lack of malice on the part of Appellant. Fortunately for both participants, the ship was in a port, where hospital facilities were readily available, rather than at sea.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 26 April 1957, is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 22nd day of November, 1957.